

**CRIMINAL SALE OF A FIREARM
IN THE SECOND DEGREE
(Two or more within one year)
Penal Law § 265.12(2)
(Committed on or after May 9, 2022)¹
(Revised July 2016, May 2022)²**

The (specify) count is Criminal Sale of a Firearm in the Second Degree.

Under our law, a person is guilty of Criminal Sale of a Firearm in the Second Degree when that person knowingly³ and unlawfully sells, exchanges, gives, or disposes of to another person or persons a total of two or more firearms in a period of not more than one year.

The following terms used in that definition have a special meaning:

A FIREARM means any pistol or revolver.⁴

¹ In May 2022, this instruction was amended to account for the statutory amendment reducing the number of applicable firearms from five to two. L. 2022, c. 56, effective May 9, 2022. This instruction may, however, be utilized for the alleged commission of the offense between December 21, 2005 and May 9, 2022 with the number of requisite firearms changed to five.

² In July 2016, in light of *People v Parrilla*, 27 NY3d 400 (2016), this instruction was revised to better state the law with respect to the element of “knowingly.” In May 2022, this instruction was revised as specified in footnote (1).

³ The word “knowingly” has been added to this definition to comport with statutory law (see Penal Law § § 15.00(2); 15.05 [2]) and with case law. *People v Persce*, 204 NY 397, 402 (1912) (“the possession [of a slungshot] which is meant is a knowing and voluntary one”); *People v Saunders*, 85 NY2d 339, 341-42 (1995) (“‘Possession,’ as part of the forbidden act, includes the Penal Law definitional component of ‘[v]oluntary act,’ which incorporates the attribute of awareness of the possession or control (Penal Law § 15.00 [2]). Thus, the corpus delicti of weapons possession . . . is the voluntary, aware act of the possession of a weapon”); *People v Ford*, 66 NY2d 428, 440 (1985) (the offense of possession of a loaded firearm requires that the possession be knowing).

⁴ Penal Law § 265.00(3). The statutory definition of a “firearm” includes other weapons. If, therefore, a firearm, other than a pistol or revolver, is in issue, see “DEFINITION OF FIREARM AS OTHER THAN A PISTOL OR REVOLVER” in “Additional Charges” at the end of the Table of Contents for Penal Law article 265 crimes.

A person KNOWINGLY sells, exchanges, gives, or disposes of a total of two or more firearms to another when that person is aware that he or she is doing so.⁵

Under this count, a firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging ammunition. A person who sells, exchanges, gives, or disposes of a firearm is not required to know that the firearm is operable.⁶

A person UNLAWFULLY sells, exchanges, gives, or disposes of a total of two or more firearms to another when that person has no legal right to do so.⁷ Under our law, with certain exceptions not applicable here, a person has no legal right to sell, exchange, give, or dispose of a firearm.

DISPOSE OF means to dispose of, give away, lease, loan, keep for sale, offer for sale, sell, transfer and otherwise dispose of.⁸

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

⁵ See Penal Law § 15.05 (2). For an expanded charge on the definition of "knowingly," see Instructions of General Applicability, Culpable Mental States, Knowingly.

⁶ Case law has added "operability" of a firearm as an element of the crime (see *People v Longshore*, 86 NY2d 851, 852 [1995]), but has further held that there is no requirement that the possessor know the firearm was operable. See *Parrilla* at 405 ["Defendants need only knowingly possess a firearm, they need not know that the firearm was loaded or operable"]; *People v Saunders*, 85 NY2d 339, 341-342 [1995]; *People v Ansare*, 96 AD2d 96, 97 [4th Dept 1983]). In December 2022, the last sentence was substituted for: "The defendant is not required to know that the firearm was operable."

⁷ See Penal Law article 400.

⁸ Penal Law § 265.00 (6).

1. That on or about (dates), in the county of (County) , the defendant, (defendant's name), sold, exchanged, gave, or disposed of a total of two or more firearms to another person or persons in a period of not more than one year; and
2. That the defendant did so knowingly and unlawfully; and
3. That [each] [at least two] of the firearms (was/were) operable.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.